

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5TH STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

Kansas State University
Manhattan, Kansas

EPA ID Number: KSD980632772

Respondent.

Proceeding under Sections 3008(a) and (g) of
the Resource Conservation and Recovery Act
as amended, 42 U.S.C. § 6928(a) and (g).

CONSENT AGREEMENT
FINAL ORDER

Docket No. RCRA-07-2004-0120

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Kansas State University (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Allegations

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice).

2. This Consent Agreement/Final Order serves as notice that the Environmental Protection Agency (EPA) has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925 and the regulations at 40 C.F.R. Part 262 and 265.

Parties

3. The Complainant is the Director of the Air, RCRA, and Toxics Division of the EPA, Region 7, as delegated from the Administrator of the EPA pursuant to EPA Delegation No. 8-9-A, dated March 20, 1985 and EPA Delegation No. R7-8-9-A, dated January 1, 1995.

4. The Respondent is Kansas State University (KSU) located in Manhattan, Kansas.

Statutory and Regulatory Framework

5. Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), allows a state to implement its own hazardous waste program "in lieu" of the federal program. The State of Kansas has been granted authorization to administer and enforce a hazardous waste program and has adopted by reference the federal regulations cited herein at pertinent parts of Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter "KAR 28-31").

6. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA shares enforcement authority with states with authorized programs and can initiate action for violations of authorized state programs. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA must provide notice to a state with an authorized program prior to issuing an order. The State of Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

Factual Background

7. The Respondent, KSU, is a public university located in the State of Kansas and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15).

8. As a result of Respondent's operations, Respondent generates hazardous waste from various locations on campus including their chemistry, biochemistry, and science laboratories and has notified as a large quantity generator and listed the following on the September 4, 2002 Handler Information Report:

a. characteristic hazardous wastes including: D001, D002, D003, D004, D005, D006, D007, D008, D009, D010, D011, D013, D015, D016, D018, D019, D020, D022, D027, D028, D032, D035, D038, D039, D040; and

b. F-listed hazardous wastes including: F002, F003, F005, F027; and

c. P-listed hazardous wastes including: P012, P015, P018, P022, P030, P037, P042, P058, P068, P075, P087, P089, P092, P098, P105, P106, P108, P112, P119; and

d. U-listed hazardous wastes including: U001, U002, U007, U008, U010, U023, U032, U036, U052, U058, U061, U067, U068, U073, U081, U089, U095, U103, U105, U114, U116, U121, U122, U124, U127, U131, U133, U134, U136, U138, U144, U147, U162, U165, U169, U170, U185, U188, U189, U197, U201, U204, U216, U217, U219, U223, U225, U238, U246, U279.

9. On or about September 17 - 19, 2002, the EPA conducted a RCRA Compliance Evaluation Inspection ("CEI") at Respondent's facility.

10. During the September CEI, the inspector observed wastes from various departments stored at Respondent's facility.

Findings of Violation

11. The allegations stated in paragraphs 1 through 10 above are herein incorporated.

Count 1 - Failure to Conduct a Hazardous Waste Determination

12. Pursuant to 40 C.F.R. § 262.11 and KAR 28-31-4(b), a generator of "solid waste," as that term is defined in 40 C.F.R. § 261.2, must determine if the solid waste is a hazardous waste.

13. At the time of the September, 2002, CEI, Respondent was storing approximately 44 unknown wastes in containers located in King Annex, Chemistry/Biochemistry Rooms 137, 128, and 148, the third floor of Burt Hall, and Throckmorton Hall Rooms 4202, 2301, and 2207. These wastes had no identifying information on them regarding content, or date of generation.

14. Respondent's failure to make a hazardous waste determination is a violation of 40 C.F.R. § 262.11 and KAR 28-31-4(b).

Count 2 - Operating an Illegal Treatment and Storage Disposal Facility Without a RCRA Permit or RCRA Interim Status

15. The regulations at KAR 28-31-4(j)(1) state, in pertinent part, that an EPA generator may accumulate as much as 55 gallons of each type of hazardous wastes or one quart of acutely hazardous waste in no more than one container at or near any point of generation where wastes initially accumulate, and which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsection (g) and (h) if the generator complies with KAR 28-31-4(j)(1)A and B.

16. The regulations at KAR 28-31-4(g) state, in pertinent part, that an EPA generator may accumulate hazardous waste on site for 90 days or less without a permit and without obtaining interim status, if the waste is placed in containers and the generator complies with 40 CFR Part 265, subparts I, AA, BB, and CC.

17. Kansas Statutes Annotated (KSA) Chapter 65, Article 3441(a)(2) states that it shall be unlawful for any person to construct, modify or operate a hazardous waste facility without a permit or other required written approval from the Secretary or to be in violation of the rules and regulations, standards or orders of the Secretary.

18. At the time of the September, 2002, CEI, Respondent had accumulated hazardous waste in containers not at or near the point of generation in Mosier Room H111 and Burt Hall Room 126.

19. At the time of the September, 2002, CEI, Respondent had accumulated a total of 36 satellite accumulation containers in various locations including; King Room 306, Chemistry/Biochemistry Room 137, 116, 349, 338, 311, 319, 229, Burt Room 207, 239, 116, 113, 109, Throckmorton Room 4026, 4029, 4408, 4401, 2306, 2207, and 4307, that were open, and/or not labeled "hazardous waste".

20. At the time of the September, 2002, CEI, Respondent was storing corrosive and halogenated solvent hazardous waste together in the <90 Day Storage Building without the use of a dike, berm, wall or other device.

21. At the time of the September 2002 CEI, Respondent was treating hazardous waste by evaporation in the Chemistry/Biochemistry rooms 234 and 334, and Throckmorton Hall Room 4206.

22. Respondent's treatment of hazardous waste without a permit and failure to comply with KAR 28-31-4(j)(1) and KAR 28-31-4(g) is in violation of KSA § 65-3441 and Section 3005 of RCRA, 42 U.S.C. § 6925 .

23. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations contained above, it is proposed that a civil penalty of \$90,849.00 be assessed against Respondent for its failure to comply with Section 3005 of RCRA and the regulations as described above.

CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement/Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement/Final Order set forth below.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement/Final Order.
4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the Consent Agreement/Final Order.
5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
6. This Consent Agreement/Final Order addresses all civil administrative claims for the RCRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.
7. Nothing contained in the Final Order portion of this Complaint and Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.
8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Complaint and Consent Agreement/Final Order and to execute and legally bind Respondent to it.
9. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a penalty of \$90,849.00 as set forth in Paragraph 1 of the Final Order.
10. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.
11. This Consent Agreement/Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.
12. This Consent Agreement and the Final Order shall remain in full force and effect

until Complainant provides Respondent with written notice, in accordance with Paragraph 11 of the Final Order, that all requirements hereunder have been satisfied.

FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this Consent Agreement/Final Order, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this Consent Agreement/Final Order, Respondent shall pay $\frac{1}{2}$ of the civil penalty in the amount of \$45,424.50. On or before August 1, 2004, Respondent shall pay the remaining balance of the penalty in the amount of \$45,648.51 (\$45,424.50, plus interest in the amount of \$224.01). Pursuant to 40 C.F.R. § 13.18, failure to make any payment according to the above schedule will automatically accelerate the debt which will become due and owing in full, immediately.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

Regional Hearing Clerk
U.S. EPA Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

The Respondent shall reference the Docket Number on the check. A copy of the check shall also be mailed to:

Elizabeth Koesterer
ARTD/RESP
U.S. EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Compliance Actions

4. Respondent shall take the following actions within the specified time periods, and according to the terms and conditions, specified in the Paragraphs below.

A. Within 180 days of the effective date of this Order, Respondent shall complete an inspection of all laboratories and other areas of the facility where solid waste is generated, accumulated and/or stored, examining especially in and under cabinets, in fume hoods, in closets and abandoned labs. Respondent shall look for all solid wastes in storage or currently generated in these locations, determine if the wastes are hazardous wastes as required by 40 C.F.R. §262.11, and if hazardous, remove the wastes for proper disposal.

B. For each solid waste identified during the inspection described in A above, Respondent shall submit the following information to EPA, within thirty (30) days of completion of the inspection:

1. Identify the solid waste generated, accumulated and/or stored,
2. Identify the location where each waste in 1. above was found,
3. Indicate the amount of waste in storage or generated per month,
4. Provide the date(s) each waste was generated,
5. Provide a detailed description of the process which generated the waste,
6. State whether the waste is a hazardous waste and list all applicable waste codes, and provide a detailed discussion of how the hazardous waste determination was conducted (i.e., process knowledge, MSDS, analytical testing, etc. as described in 40 C.F.R. §262.11),
7. Provide a detailed discussion of how the waste was managed on-site, and
8. Provide records documenting the date, amount, and where the waste was disposed (i.e., copies of bill of lading, contractual agreement, hazardous waste manifest, etc.). Cross reference each waste in 1. above to the wastes recorded in the bill(s) of lading, contractual agreement, hazardous waste manifest(s), etc.

C. Develop and submit for EPA approval, a schedule and operating procedure for routine inspection and regular removal of waste from the labs and other areas at the facility where hazardous wastes are generated, accumulated and/or stored. Implement this operating procedure upon approval by EPA.

C. Parties Bound

5. This Final Order portion of this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or

entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

D. Reservation of Rights

6. Notwithstanding any other provision of this Consent Agreement/Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement/Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed twenty-seven thousand five hundred dollars (\$27,500) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

7. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement/Final Order.

8. Except as expressly provided herein, nothing in this Consent Agreement/Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's facility.

9. Notwithstanding any other provisions of the Consent Agreement/Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

10. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

11. The provisions of this Consent Agreement/Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

2/4/04
Date

William A. Spratlin
William A. Spratlin
Director
Air, RCRA, and Toxics Division
U.S. Environmental Protection Agency
Region 7

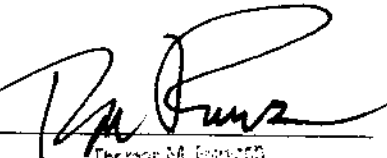
2/9/09
Date

Kristina Kemp
Kristina Kemp
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7


RESPONDENT:

Kansas State University

1/28/07
Date

Name 
Thomas M. Johnson
Vice President for
Administration and Finance
Title _____
105 Anderson Hall
Address Manhattan, KS 66506

IT IS SO ORDERED. This Final Order shall become effective immediately.

A handwritten signature in cursive script, appearing to read "Robert Patrick", is written over a horizontal line.

Robert Patrick
Regional Judicial Officer

Date Feb 10, 2004

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand-delivered the original and one true copy of this Consent Agreement/Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101. I further certify that on the date below I sent by certified mail, return receipt requested, a true and correct copy of the original Consent Agreement/Final Order to the following agent for KSU:

Cheryl Strecker
Kansas State University
Office of University Attorney
111 Anderson Hall
Manhattan, KS 66506-0115

Dated this _____ day of _____, 200_.

Name

IN THE MATTER OF Kansas State University, Respondent
Docket No. RCRA-07-2004-0120

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Kristina Kemp
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Cheryl Strecker
Kansas State University
Office of University Attorney
111 Anderson Hall
Manhattan, Kansas 66506-0115

Dated: 2/10/04


Kathy Robinson
Regional Hearing Clerk